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OFFICE OF PETITIONS

In re Patent No. 6,866,797	:	
Martin et al.	:	
Issue Date: March 15, 2005	:	DECISION ON REQUEST FOR
Application No. 09/922,231	:	RECONSIDERATION OF
Filed: August 3, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 11181/3	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d)," filed May 16, 2005. Patentees request that the patent term adjustment indicated in the patent be corrected from seventeen (17) days to one hundred fifty-six (156) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On March 15, 2005, the above-identified application matured into U.S. Patent No. 6,866,797. The instant request for reconsideration filed May 16, 2005 (certificate of mailing dated May 13, 2005) was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of 17 days. Patentees request correction of the patent term adjustment to increase the patent term adjustment to 156 days on the basis that the patent issued 3 years and 224 days after the date on which the application was filed.

It is agreed that the instant patent issued 3 years and 224 days after its filing date. However, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period

during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 160 days attributable to grounds specified in § 1.702(a)(1) overlaps with the 224 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 224 days. Accordingly, a period of adjustment to cover the net increase in PTA of 64 days was entered upon issuance of the patent.

In view thereof, the patent properly issued with a patent term adjustment of 17 days (160 + 64 days of adjustment reduced by 207 days of reduction for applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being returned to Files Repository for storage as a patented file.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



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